JS 44 (Rev. 07/16)

PD 17-cv-953

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

17 953

I. (a) PLAINTIFFS
Joan Junod

DEFENDANTS
Mutual of Omaha Insurance Company and Burris Logistics, Inc.

(b) County of Residence of First Listed Plaintiff: Philadelphia, Pa
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant: Douglas County, Ne
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, Email and Telephone Number)*

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)* *(For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☒ 791 Employee Retirement Income Security Act

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
29 U.S.C. § 1132(a) and 29 U.S.C. §1166

Brief description of cause:
Violation of ERISA and COBRA in wrongful denial of life insurance claim. Additional common law claims.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:
JUDGE ______ DOCKET NUMBER ______

DATE 3 · 1 · 17
SIGNATURE OF ATTORNEY OF RECORD

MAR - 1 2017

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

PD

17 953

Address of Plaintiff: 3443 Aubrey Avenue, Philadelphia, Pa 19114

Address of Defendant: (1) Mutual of Omaha Plaza, Omaha, Nebraska 68175; (2) 501 S.E. 5th Street, Milford, DE 19963

Place of Accident, Incident or Transaction: Philadelphia, Pa

(*Use Reverse Side For Additional Space*)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Unknown Yes☐ No☐

Does this case involve multidistrict litigation possibilities? Yes☐ NoX

RELATED CASE, IF ANY:

Case Number: ________ Judge ________ Date Terminated: ________

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes☐ NoX
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes☐ NoX
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes☐ NoX
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes☐ NoX

CIVIL: (Place ✔ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. X All other Federal Question Cases (Please specify) ERISA and COBRA

B. *Diversity Jurisdiction Cases:*

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases (Please specify) ________

ARBITRATION CERTIFICATION

(*Check Appropriate Category*)

I, ________, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of $150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

MAR - 1 2017

DATE: ________ ________ Attorney-at-Law ________ Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 3·1·17 [signature] Attorney-at-Law 61751 Attorney I.D.#

PD

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Joan Junod	:	CIVIL ACTION
v.	:	17 953
Mutual of Omaha Insurance Company, et al	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )

(f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

3-1-17		Plaintiff
Date	**Attorney-at-law**	**Attorney for**
856-995-2220	856-429-1060	jcraig@kwclawyers.com
Telephone	**FAX Number**	**E-Mail Address**

(Civ. 660) 10/02

MAR - 1 2017

#400

PD

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

JOAN JUNOD, individually and as Administratrix of the Estate of Francis Junod, deceased, Plaintiff, v. MUTUAL OF OMAHA INSURANCE COMPANY, a Nebraska Corporation and BURRIS LOGISTICS, INC., a Delaware Corporation, Defendant.	CIVIL ACTION NO.: 17 953

COMPLAINT AND JURY DEMAND

Plaintiff, Joan Junod, by way of Complaint against Defendants Mutual of Omaha and Burris Logistics, Inc. says as follows:

I. PARTIES

1. Plaintiff, Joan Junod ("Plaintiff") is an individual residing at 3443 Aubrey Avenue, Philadelphia, Pennsylvania 19114 and is the widow and administratrix of the Estate of Francis Junod, and the sole beneficiary of a group life insurance policy issues to Francis Junod by Defendant Mutual of Omaha through his employer, Defendant Burris Logistics, Inc. and its wholly owned subsidiary, Honor Foods.

2. Defendant Mutual of Omaha ("Defendant Mutual") is a life insurance company, incorporated in the State of Nebraska, having its principal place of business at Mutual of Omaha Plaza, Omaha, Nebraska 68175. At all times relevant

hereto, Defendant Mutual was authorized to do business, and was doing business, in the Commonwealth of Pennsylvania.

3. Defendant Burris Logistics, Inc. ("Defendant Burris") is incorporated in the State of Delaware and has its principal place of business at 501 S.E. 5th Street, Milford, Delaware 19963. Defendant Burris, a freight and warehousing company, is the parent of a wholly owned subsidiary, Honor Foods, a food distribution company, located at 1801 N. 5th Street, Philadelphia, Pennsylvania 19122.

II. JURISDICTION AND VENUE

4. This is an action for damages based on Defendants' violations of the notice provisions of Consolidated Omnibus Budget Reconciliation Act ("COBRA") 29 U.S.A. §1166, violations of record keeping requirements under COBRA and the wrongful denial of benefits under an employee benefit plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001 et seq and 29 U.S.C. §1132(a) et seq.

5. Insofar as this claim arises under the federal statutes, this Court has subject matter jurisdiction under 29 U.S.C. §1331 (federal question jurisdiction).

6. This Court has personal jurisdiction over both Defendants insofar as both Defendants do business in the Commonwealth of Pennsylvania and the cause of action arose here.

7. Venue is proper in this judicial district pursuant to 29 U.S.C. §1391(b)(2) insofar as a substantial part of the events and omissions giving rise to this claim occurred in this juridical district.

III. BACKGROUND FACTS

8. Plaintiff repeats and incorporates the allegations contained in Paragraphs 1-8 of this Complaint as if set forth fully and at length herein.

9. Plaintiff's deceased husband, Francis Junod was, at all times relevant hereto, a full time employee of Defendant Burris and was employed as a truck driver for its subsidiary, Honor Foods.

10. As such, Mr. Junod was a participant in the "2015 Honor Foods Union Team Member Benefit Plan" ("the Plan"), a plan governed by ERISA and administered by Honor Foods and Defendant Burris. [See copy of the Plan, attached as Exh. A].

11. The Plan provided health and welfare benefits to employees of Defendant Burris, like Mr. Junod, as part of their employment, including group life insurance coverage provided through Defendant Mutual.

12. Upon information and belief, the premiums for the group life insurance were paid by Defendant Burris or its subsidiary Honor Foods, directly to Defendant Mutual, through payroll deductions from employees, like Mr. Junod.

13. The group life insurance coverage provided by Defendant Mutual through the Plan carried a defined "basic" death benefit for truck drivers, like Mr. Junod, of $50,000, although employees could purchase additional "voluntary life benefits in $10,000 increments to a maximum of 4 times your salary or $500,000." [See Plan (Exh. A) at p. 24].

14. The Plan did not provide any notices whatsoever to employees, like Mr. Junod, of their statutory right to convert their group life insurance policy to an

individual plan upon termination/separation from employment with Defendant Burris or its subsidiary, Honor Foods.

15. Mr. Junod worked as a truck driver for Defendant Burris and its subsidiary Honor Foods for 18 years.

16. In August 2014, Mr. Junod was diagnosed with prostate cancer, which despite chemotherapy and radiation, aggressively spread to esophageal cancer and then brain cancer.

17. Sadly, Mr. Junod succumbed to his disease and passed away on June 5, 2015.

18. Prior to his passing on June 5, 2015, Defendant Burris, through its subsidiary Honor Foods, terminated Mr. Junod effective March 1, 2015, at the expiration of his medical leave period under the Family Medical Leave Act.

19. The Notice of Termination was signed by Ann Polites, the Honor Foods Director of Human Resources, and was sent to Mr. Junod at his home address in Philadelphia by certified mail on February 27, 2015. [A copy of the Termination Letter is attached hereto as Exh. B].

20. Although the Termination Letter requested that Mr. Junod return his company issued cell phone, the Notice of Termination did not mention or discuss the continuation of benefits under COBRA, including the right to convert his group life insurance policy to an individual policy or the time frame for doing so.

21. After Mr. Junod's death in June 2015, Plaintiff, Mr. Junod's widow and sole beneficiary on the life insurance policy, called Ms. Polites at Honor Foods to inquire as to Frank Junod's life insurance benefits. Plaintiff was told by Ms. Polites that Defendant Mutual

had sent Mr. Junod papers in March 2015 (when he was in the midst of his cancer treatments) about the conversion policy which he had to sign and return within 30 days.

22. Plaintiff, who lived with Mr. Junod at the time and was his primary caregiver, remarked that her husband, a meticulous record keeper, had never received any such notice from Defendant Mutual and if he had received same, he would have completed any such form promptly and completely, especially in light of the fact that he had paid into the policy during his employment at Honor Foods and the life insurance policy was intended as to benefit his wife, and would be necessary, in light of his terminal illness.

23. Although Plaintiff requested Ms. Polites, the Plan Administrator, to provide a copy of the notice that was allegedly sent to her late husband in March 2015, Ms. Polites said she did not have it.

24. Instead, Ms. Polites then offered that Honor Foods would "reinstate" the policy if Ms. Junod would agree to pay "back premiums" that would have been due for the three months from April through June 2015, when Mr. Junod passed away. According to Ms. Polites, Honor Foods would "put up" $2,000 toward the back premiums if Ms. Junod would agree to put up the other "$2,000".

25. Ms. Polites further informed that Ms. Junod would have to agree to reimburse Honor Foods for the $2,000 it "put up" after the policy was reinstated and the death benefits paid.

26. Relying on Ms. Polites as the Plan Administrator, Plaintiff agreed to the "reinstate" arrangement proposed by Ms. Polites.

27. Ms. Polites sent claim forms to Plaintiff to complete, and Plaintiff completed the paperwork and returned it to Honor Foods, but did not hear anything

from Ms. Polites. Plaintiff never sent a $2,000 check to Honor Foods for the reinstatement because Ms. Polites never informed her when to send it or where to send it or to whom to make it payable.

28. Two months passed and Plaintiff heard nothing. She did not receive any response from either Honor Foods or Defendant Mutual.

29. In August 2015, Plaintiff called Ms. Polites to again inquire as to the status of the life insurance death benefits. Ms. Polites informed her during that conversation that she had received an email from Defendant Mutual that the life insurance claim was denied, but did not give any explanation.

30. Plaintiff was understandably devastated and very upset, and Plaintiff wrote to Ms. Polites again asking for an explanation as to the reason for the denial and asking for proof that Mr. Junod had been notified of his right to convert the group life insurance policy to individual life insurance at the termination of his employment and had, in fact, declined such option.

31. On January 18, 2016, over 10 months after Mr. Junod had been terminated by Defendant Burris and/or its subsidiary, Honor Foods, Ms. Polites sent Plaintiff a letter stating, without proof or documentation, that Defendant Mutual had sent Mr. Junod a letter on March 9, 2015 (nine days post termination) notifying him of the conversion option and requiring payment and completion of the forms by March 31, 2015. [A copy of Ms. Polites' January 18, 2016 letter is attached as Exh. C].

32. Notably, Ms. Polites did not include any proof of a conversion notice or any proof that Defendant Mutual had sent Mr. Junod a conversion notice with her January 28, 2016 letter.

33. Plaintiff and her children have made numerous inquiries to both Defendant Mutual and Honor Foods requesting documentation that the conversion notice was ever sent to Mr. Junod, but they have received no response from either Defendant that would show that Mr. Junod was informed of his conversion rights.

34. Specifically, in July 2015 after Ms. Polites and Plaintiff had the conversation wherein Ms. Polites suggested "reinstatement" of the policy, Kathy Junod and Kenneth Junod, two of Plaintiff's adult children, went to Honor Foods to ask for documentation as to their father's life insurance and his conversion rights and notice. Ms. Polites refused to speak with them and they were rebuffed.

35. In September 2016, Janice Vicere, another of Plaintiff's adult children, finally was able to get Ms. Polites on the phone. Ms. Vicere asked for documentation as to the conversion, and in response, Ms. Polites sent Ms. Vicere a Memo on Mutual of Omaha Letterhead with a salutation to "Dear Frank Junod", dated March 9, 2015, which purported to be an offer to convert the group life insurance policy to an individual policy. Attached to the Memo was a two page form explaining Conversion and a blank "Conversion Application" [A copy of the March 9, 2015 Conversion Memo and Package is attached as Exh. D].

36. Notably, the Memo, which Ms. Polites claims was sent to Mr. Junod in March 2015 does not contain an address for Mr. Junod, does not contain any identifying information for Mr. Junod such as date of birth, does not contain any

indication as to how the Memo and Package were sent or delivered to Mr. Junod and does not contain any signature from any one at Defendant Mutual.

37. Moreover, when a legal representative for Plaintiff contacted Defendant Mutual in late 2016 asking for documentation as to the denial of Mr. Junod's life insurance claim, the representative learned that Defendant Mutual had no information on Mr. Junod in their system, including address or date of birth.

38. Despite numerous requests by Plaintiff and her legal representation for payment of death benefits under Mr. Junod's life insurance policy, including a detailed pre-suit demand letter sent by counsel for Plaintiff to both Defendants on January 30, 2017 [Exh. E hereto], Defendant Burris has not agreed to pay the claim and Defendant Mutual has denied the claim.

39. Plaintiffs have exhausted their administrative remedies as to both Defendants.

COUNT I
VIOLATION OF ERISA
Wrongful Denial of Claim for Benefits

40. Plaintiff repeats and incorporates the allegations in Paragraphs 1-39 of this Complaint as if set forth fully and at length herein.

41. As set forth above, Plaintiff's deceased husband, Mr. Junod was a participant in an employee benefit plan ("the Plan") administered by Defendant Burris and its subsidiary, Honor Foods, which Plan was governed by ERISA.

42. Pursuant to the terms of this Plan, Mr. Junod paid for and was promised life insurance with a death benefit of $50,000 paid by Defendant Mutual.

43. Upon his separation from employment, neither Mr. Junod nor Plaintiff was provided with notice pursuant to COBRA of his right to convert his group life insurance benefits to individual benefits and therefore, the group life insurance benefits should have continued in existence.

44. Upon Mr. Junod's death in June 2015, Plaintiff, as the beneficiary and the Administratrix of Mr. Junod's life insurance benefits, made a timely claim for benefits, which claim has been denied by both Defendants.

45. Defendant's denial of Plaintiff's claims for death benefits is wrongful insofar as Defendants never provided Plaintiff or Mr. Junod notices of his right to convert his group life insurance policy to an individual life insurance policy.

46. Plaintiff, through herself and her legal representatives has exhausted her administrative remedies in seeking payment of the claim.

47. Plaintiff is entitled to bring this civil action for enforcement, requesting payment of the claim, in full statutory remedies and penalties and attorneys fees pursuant to Section 502 of ERISA, 29 U.S.C. §1132(a) and (g).

WHEREFORE, Plaintiff Joan Junod demands judgment against Defendants Mutual of Omaha and Burris Logistics, Inc. and its subsidiary Honor Foods, jointly and severally, for compensatory damages in the full amount of the death benefit due to Francis Junod at the time of his termination, statutory fines and penalties, interests, costs of suit, attorneys fees and such other relief as this Court deems just and reasonable.

COUNT II
VIOLATION OF COBRA
Failure to Provide Notice

48. Plaintiff repeats and incorporates the allegations in Paragraphs 1-47 of this Complaint as if set forth fully and at length herein.

49. As set forth above, Plaintiff's deceased husband, Mr. Junod was a participant in an employee benefit plan ("the Plan") administered by Defendant Burns and its subsidiary, Honor Foods, which Plan was governed by ERISA.

50. Pursuant to the terms of this Plan, Mr. Junod paid for and was promised life insurance with a death benefit of $50,000 paid by Defendant Mutual.

51. Defendant Burris, through its subsidiary Honor Foods, terminated Mr. Junod's employment effective March 31, 2015.

52. Under COBRA, Defendant Burris and/or its subsidiary, Honor Foods, as Plan Administrators and Defendant Mutual as the insurance provider, were required to provide Plan beneficiaries, like Mr. Junod, with notice of their rights to continuation of certain benefits, including his right to convert and continue life insurance coverage, within 30 days of a qualifying event such as termination.

53. Upon his termination of his employment, Defendants, in violation of COBRA, failed to provide Mr. Junod timely notice of his right to convert his group life insurance coverage under the Plan to an individual policy, with Defendants providing the first notice of same over 10 months after the qualifying event and more than six months after Mr. Junod's death, resulting in the denial of the claim and loss of the death benefits.

WHEREFORE, Plaintiff Joan Junod demands judgment against Defendants Mutual of Omaha and Burris Logistics, Inc. and its subsidiary Honor Foods, jointly and severally, for compensatory damages in the full amount of the death benefit due to Francis Junod at the time of his termination, statutory fines and penalties, interests, costs of suit, attorneys fees and such other relief as this Court deems just and reasonable.

COUNT III
VIOLATION OF COBRA
Failure to Keep Records

54. Plaintiff repeats and incorporates all the allegations in Paragraphs 1-53 of this Complaint as if set forth fully and at length herein.

55. As set forth above, Plaintiff's deceased husband, Mr. Junod was a participant in an employee benefit plan ("the Plan") administered by Defendant Burns and its subsidiary, Honor Foods, which Plan was governed by ERISA.

56. Pursuant to the terms of this Plan, Mr. Junod paid for and was promised life insurance with a death benefit of $50,000 paid by Defendant Mutual.

57. Upon his separation from employment, neither Mr. Junod nor Plaintiff was provided with notice pursuant to COBRA of his right to convert his group life insurance benefits to individual benefits and therefore, the group life insurance benefits should have continued in existence.

58. Upon Mr. Junod's death in June 2015, Plaintiff, as the beneficiary of Mr. Junod's life insurance benefits, made a timely claim for benefits, which claim has been denied by both Defendants.

59. Under COBRA, Defendant Burris or its subsidiary Honor Foods, is required to maintain records to determine if COBRA notice was given pursuant to 29 U.S.C. §1166(a)(1) so that when a factual dispute arises as to whether employee received timely COBRA notice, the employer bears the burden of proof.

60. Following the denial of her claim for life insurance, Plaintiff and her legal representatives asked Defendant Burris, through its subsidiary Honor Foods, for its documentation showing that Defendants had provided Mr. Junod timely notice of his right to convert his group life insurance policy to an individual life insurance policy but neither Defendant Burris not its subsidiary Honor Foods, could provide such documentation.

61. Defendant's failure to provide documentation constitutes a statutory violation of COBRA record keeping requirements

WHEREFORE, Plaintiff Joan Junod demands judgment against Defendant Burris Logistics, Inc. and its subsidiary Honor Foods, jointly and severally, for compensatory damages in the full amount of the death benefit due to Francis Junod at the time of his termination, statutory fines and penalties, interests, costs of suit, attorneys fees and such other relief as this Court deems just and reasonable.

COUNT IV
BAD FAITH DENIAL OF INSURANCE CLAIM
Violation of 42 Pa.C.S. §8371

62. Plaintiff repeats and incorporates all the allegations in Paragraphs 1-61 of this Complaint as if set forth fully and at length herein.

63. As set forth above, Defendant Mutual is an insurer authorized to do business in the Commonwealth of Pennsylvania and as such, is subject to and governed by Pennsylvania statutes and regulations, including 42 Pa.C.S. §8371.

64. As set forth above, Defendant Mutual provided group life insurance to Plaintiff's deceased husband, Mr. Junod, as a benefit of his employment with Defendant Burris and its subsidiary, Honor Foods, pursuant to the Plan, which insurance had a $50,000 death benefit.

65. Plaintiff was the sole beneficiary of Mr. Junod's life insurance.

66. Unbeknownst to Plaintiff or her deceased husband, Mr. Junod, or to Plaintiff, until after this death, the group insurance policy had a conversion provision which allowed an employee, like Mr. Junod, to convert his group life insurance to an individual policy with the same death benefit within 30 days of his separation from employment.

67. Defendant Burris, through its subsidiary, Honor Foods, terminated Mr. Junod, who was battling a terminal cancer, at the expiration of his medical leave period under the FMLA, on March 1, 2015.

68. Neither Defendant Burris and/or Honor Foods or Defendant Mutual provided Mr. Junod or Plaintiff with notice of his right to convert his group life insurance policy at the time of his termination.

69. Mr. Junod died on June 5, 2015 and Plaintiff, as his beneficiary, immediately contacted the Plan Administrator at Honor Foods to make a claim for death benefits under his group life insurance policy.

70. Notwithstanding the fact that Defendants failed to provide Mr. Junod or Plaintiff with timely notice of his right to convert his group life insurance policy to an individual policy, Plaintiff's claim was denied by Defendant Mutual as untimely.

71. Defendant Mutual's denial of Plaintiff claim for life insurance benefits constitutes a bad faith denial insofar as (1) Defendant Mutual lacked any reasonable basis for denying the claim insofar as they have no proof that a conversion notice was timely sent to Mr. Junod and (2) Defendant Mutual knew of or recklessly disregarded its lack of reasonable basis in denying the claim.

72. Defendant Mutual's denial of the claim constitutes a violation of 42 Pa.C.S. §8371 warranting an award of compensatory damages to Plaintiff for the full amount of the death benefit ($50,000) at the time of Mr. Junod's separation from employment, interest on the claim from June 5, 2015 to the present at a statutory interest rate equal to the prime rate plus 3%, punitive damages and attorneys fees and costs.

WHEREFORE, Plaintiff, Joan Junod hereby demands judgment in her favor against Defendant Mutual of Omaha for compensatory damages in the amount of $50,000, statutory interest, punitive damages and attorneys fees pursuant to 42 Pa.C.S. §8371 and such other relief as this Court deems just and reasonable.

COUNT V
BREACH OF CONTRACT

73. Plaintiff repeats and incorporates all the allegations in Paragraphs 1-72 of this Complaint as if set forth fully and at length herein.

74. The group life insurance provided to Plaintiff's deceased husband, Mr. Junod, under the Plan, was a contract between Mr. Junod and Defendants whereby Defendants were contractually obligated to paying Mr. Junod's beneficiary $50,000 upon his death.

75. Plaintiff and Mr. Junod have performed all obligations under the contract, including making a timely claim for death benefits upon Mr. Junod's death.

76. Defendants' refusal to pay death benefits due under the life insuance policy constitute a breach of contract.

WHEREFORE, Plaintiff, Joan Junod hereby demands judgment in her favor against Defendant Mutual of Omaha for compensatory damages in the amount of $50,000, statutory interest, punitive damages and attorneys fees pursuant to 42 Pa.C.S. §8371 and such other relief as this Court deems just and reasonable

COUNT VI
NEGLIGENCE

77. Plaintiff repeats and incorporates all the allegations in Paragraphs 1-76 of this Complaint as if set forth fully and at length herein.

78. The group life insurance provided to Plaintiff's deceased husband, Mr. Junod, was an employee benefit under the Plan.

79. As set forth above, the Plan document provided to Mr. Junod during his employment with Defendant Burris or its subsidiary, Honor Foods, did not contain any notice that the group life insurance was convertible to an individual life

insurance policy upon separation from employment or that the separated employee had 30 days from the date of his/her separation to convert the policy.

80. Defendants had a duty, either in the Plan document or in another writing to confirm that Mr. Junod had timely notice of this right to convert.

81. Defendant's breached their duty by failing to provide any notice of Mr. Junod's conversion rights until 10 months after his separation from employment and more than six months after his death.

82. Defendant's failure to provide timely notice to Mr. Junod proximately caused Plaintiff's claim for death benefits, which was made timely upon Mr. Junod's death, to be denied, resulting in her loss of death benefits due under the policy.

WHEREFORE, Plaintiff Joan Junod demands judgment against Defendants Mutual of Omaha and Burris Logistics, Inc. and its subsidiary Honor Foods, jointly and severally, for compensatory damages in the full amount of the death benefit due to Francis Junod at the time of his termination, interest, costs of suit, attorneys fees and such other relief as this Court deems just and reasonable

COUNT VII
INTENTIONAL NON-DISCLOSURE

83. Plaintiff repeats and incorporates all the allegations in Paragraphs 1-82 in this Complaint as if set forth fully and at length herein.

84. The group life insurance provided to Plaintiff's deceased husband, Mr. Junod, was an employee benefit under the Plan.

85. As set forth above, the Plan document provided to Mr. Junod during his employment with Defendant Burris or its subsidiary, Honor Foods, did not disclose

or contain any notice that the group life insurance policy was convertible to an individual life insurance policy upon separation from his employment or that the separated employee had 30 days from the date of his or her separation to convert the policy.

86. Defendants' also failed to disclose to Mr. Junod in writing that he had a right to convert the group life insurance policy to an individual life insurance policy within 30 days of his termination from employment.

87. Defendants' failure to disclose to Mr. Junod his conversion rights in either the Plan document or in a separate writing received by Mr. Junod constituted Defendant's intentional non-disclosure of a material fact.

88. Defendants; intentional non-disclosure of the conversion right was made under circumstances where Defendants' knew of its falsity.

89. Defendants intended that Mr. Junod and Plaintiff rely on the Plan document, which reliance resulted in the denial of the death benefit claim to Plaintiff upon Mr. Junod's death.

WHEREFORE, Plaintiff Joan Junod demands judgment against Defendants Mutual of Omaha and Burris Logistics, Inc. and its subsidiary Honor Foods, jointly and severally, for compensatory damages in the full amount of the death benefit due to Francis Junod at the time of his termination and punitive damages, statutory fines and penalties, interests, costs of suit, attorneys fees and such other relief as this Court deems just and reasonable

CRAIG, ANNIN & BAXTER, LLP

Jeffrey S. Craig, Esquire
Attorney for Plaintiff

Dated: 3.1.17

DEMAND FOR TRIAL BY JURY

Plaintiff, Joan Junod, hereby demands trial by jury as to all issues.

CRAIG, ANNIN & BAXTER, LLP

Jeffrey S. Craig, Esquire
Attorneys for Plaintiff

Dated: 3.1.17